



Senate

General Assembly

File No. 608

January Session, 2013

Substitute Senate Bill No. 978

Senate, April 24, 2013

The Committee on Government Administration and Elections reported through SEN. MUSTO of the 22nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING SUBCONTRACTOR PREQUALIFICATION
AND CLASSIFICATION THRESHOLDS AND INCREASING THE
THRESHOLD FOR REQUIRING COMPETITIVE BIDDING OF PUBLIC
WORKS PROJECTS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsections (a) and (b) of section 4b-91 of the general
2 statutes are repealed and the following is substituted in lieu thereof
3 (*Effective July 1, 2013*):

4 (a) Every contract for the construction, reconstruction, alteration,
5 remodeling, repair or demolition of any public building or any other
6 public work by the state except a public highway or bridge project or
7 any other construction project administered by the Department of
8 Transportation, which is estimated to cost more than [five hundred
9 thousand] one million dollars, except a contract awarded by the
10 Commissioner of Construction Services for (1) a community court
11 project, as defined in subsection (j) of section 4b-55, (2) the downtown

12 Hartford higher education center project, as defined in subsection (l) of
13 section 4b-55, (3) a correctional facility project, as defined in subsection
14 (m) of section 4b-55, (4) a juvenile detention center project, as defined
15 in subsection (n) of section 4b-55, or (5) a student residential facility for
16 the Connecticut State University System that is a priority higher
17 education facility project, as defined in subsection (f) of section 4b-55,
18 shall be awarded to the lowest responsible and qualified general
19 bidder who is prequalified pursuant to section 4a-100 on the basis of
20 competitive bids in accordance with the procedures set forth in this
21 chapter, after the Commissioner of Construction Services or, in the
22 case of a contract for the construction of or work on a building or other
23 public work under the supervision and control of the Joint Committee
24 on Legislative Management of the General Assembly, the joint
25 committee or, in the case of a contract for the construction of or work
26 on a building or other public work under the supervision and control
27 of one of the constituent units of the state system of higher education,
28 the constituent unit, has invited such bids by notice posted on the State
29 Contracting Portal. Every contract for the construction, reconstruction,
30 alteration, remodeling, repair or demolition of any public building or
31 any other public work by a public agency that is paid for, in whole or
32 in part, with state funds and that is estimated to cost more than [five
33 hundred thousand] one million dollars, except a public highway or
34 bridge project or any other construction project administered by the
35 Department of Transportation, shall be awarded to a bidder that is
36 prequalified pursuant to section 4a-100 after the public agency has
37 invited such bids by notice posted on the State Contracting Portal. The
38 Commissioner of Construction Services, the joint committee, the
39 constituent unit or the public agency, as the case may be, shall indicate
40 the prequalification classification required for the contract in such
41 notice. As used in this section, "prequalification classification" means
42 the prequalification classifications established by the Commissioner of
43 Administrative Services pursuant to section 4a-100. As used in this
44 section, "public agency" means public agency, as defined in section 1-
45 200.

46 (b) The Commissioner of Construction Services, the joint committee

47 or the constituent unit, as the case may be, shall determine the manner
48 of submission and the conditions and requirements of such bids, and
49 the time within which the bids shall be submitted, consistent with the
50 provisions of this section and sections [4b-91] 4b-92 to 4b-96, inclusive.
51 Such award shall be made not later than ninety days after the opening
52 of such bids. If the general bidder selected as the general contractor
53 fails to perform the general contractor's agreement to execute a
54 contract in accordance with the terms of the general contractor's
55 general bid and furnish a performance bond and also a labor and
56 materials or payment bond to the amount specified in the general bid
57 form, an award shall be made to the next lowest responsible and
58 qualified general bidder. No employee of the Department of
59 Construction Services, the joint committee or a constituent unit with
60 decision-making authority concerning the award of a contract and no
61 public official, as defined in section 1-79, may communicate with any
62 bidder prior to the award of the contract if the communication results
63 in the bidder receiving information about the contract that is not
64 available to other bidders, except that if the lowest responsible and
65 qualified bidder's price submitted is in excess of funds available to
66 make an award, the Commissioner of Construction Services, the Joint
67 Committee on Legislative Management or the constituent unit, as the
68 case may be, may negotiate with such bidder and award the contract
69 on the basis of the funds available, without change in the contract
70 specifications, plans and other requirements. If the award of a contract
71 on said basis is refused by such bidder, the Commissioner of
72 Construction Services, the Joint Committee on Legislative
73 Management or the constituent unit, as the case may be, may negotiate
74 with other contractors who submitted bids in ascending order of bid
75 prices without change in the contract, specifications, plans and other
76 requirements. In the event of negotiation with general bidders as
77 provided in this section, the general bidder involved may negotiate
78 with subcontractors on the same basis, provided such general bidder
79 shall negotiate only with subcontractors named on such general
80 bidder's general bid form.

81 Sec. 2. Subsection (j) of section 4b-91 of the general statutes is

82 repealed and the following is substituted in lieu thereof (*Effective July*
83 *1, 2013*):

84 (j) [On and after October 5, 2009, no] No person whose subcontract
85 exceeds five hundred thousand dollars in value may perform work as
86 a subcontractor on a project for the construction, reconstruction,
87 alteration, remodeling, repair or demolition of any public building or
88 any other public work by the state or a municipality, except a public
89 highway or bridge project or any other construction project
90 administered by the Department of Transportation, which project is
91 estimated to cost more than five hundred thousand dollars and is paid
92 for, in whole or in part, with state funds, unless, at the time of the bid
93 submission, the person is prequalified in accordance with section 4a-
94 100. The provisions of this subsection shall not apply to a project
95 described in subdivision (2) of subsection (a) of this section.

96 Sec. 3. Section 4b-24b of the general statutes is repealed and the
97 following is substituted in lieu thereof (*Effective July 1, 2013*):

98 (a) Whenever realty uses designed uniquely for state use and for
99 periods over five years are concerned, the Commissioner of
100 Construction Services shall, whenever practicable, attempt to construct
101 on state-owned land. Whenever the Commissioner of Construction
102 Services has established specific plans and specifications for new
103 construction on state land or new construction for sale to the state: (1)
104 If it appears to the commissioner that the cost of the project shall be
105 less than [five hundred thousand] one million dollars, contracts shall
106 be made, where practicable, through a process of sealed bidding as
107 provided in section 4b-91, as amended by this act, relating to projects
108 in excess of [five hundred thousand] one million dollars; (2) if it
109 appears to the commissioner that the space needs of the requesting
110 agency are less than five thousand square feet, the commissioner shall,
111 whenever practicable, carry on advertising, in accordance with the
112 provisions of section 4b-34 relating to projects in excess of five
113 thousand square feet, in order to allow an equal opportunity for third
114 parties to do business with the state without regard to political

115 affiliation, political contributions or relationships with persons in state,
116 federal or local governmental positions.

117 (b) The commissioner may designate projects to be accomplished on
118 a total cost basis for (1) new facilities to provide for the substantial
119 space needs of a requesting agency, (2) the installation of mechanical
120 or electrical equipment systems in existing state facilities, or (3) the
121 demolition of any state facility that the commissioner is authorized to
122 demolish under the general statutes. If the commissioner designates a
123 project as a designated total cost basis project, the commissioner may
124 enter into a single contract with a private developer which may
125 include such project elements as site acquisition, architectural design
126 and construction. The commissioner shall select a private developer
127 from among the developers who are selected and recommended by the
128 award panels established in this subdivision. All contracts for such
129 designated projects shall be based on competitive proposals received
130 by the commissioner, who shall give notice of such project, and
131 specifications for the project, by advertising, at least once, in a
132 newspaper having a substantial circulation in the area in which such
133 project is to be located. No contract which includes the construction,
134 reconstruction, alteration, remodeling, repair or demolition of any
135 public building for work by the state for which the total cost is
136 estimated to be more than [five hundred thousand] one million dollars
137 may be awarded to a person who is not prequalified for the work in
138 accordance with section 4a-100. The commissioner shall determine all
139 other requirements and conditions for such proposals and awards and
140 shall have sole responsibility for all other aspects of such contracts.
141 Such contracts shall state clearly the responsibilities of the developer to
142 deliver a completed and acceptable product on a date certain, the
143 maximum cost of the project and, as a separate item, the cost of site
144 acquisition, if applicable. No such contract may be entered into by the
145 commissioner without the prior approval of the State Properties
146 Review Board and unless funding has been authorized pursuant to the
147 general statutes or a public or special act.

148 Sec. 4. Section 4b-52 of the general statutes is repealed and the

149 following is substituted in lieu thereof (*Effective July 1, 2013*):

150 (a) (1) No repairs, alterations or additions involving expense to the
151 state of five hundred thousand dollars or less or, in the case of repairs,
152 alterations or additions to a building rented or occupied by the Judicial
153 Branch, one million two hundred fifty thousand dollars or less or, in
154 the case of repairs, alterations or additions to a building rented or
155 occupied by a constituent unit of the state system of higher education,
156 two million dollars or less, shall be made to any state building or
157 premises occupied by any state officer, department, institution, board,
158 commission or council of the state government and no contract for any
159 construction, repairs, alteration or addition shall be entered into
160 without the prior approval of the Commissioner of Construction
161 Services, except repairs, alterations or additions to a building under
162 the supervision and control of the Joint Committee on Legislative
163 Management and repairs, alterations or additions to a building under
164 the supervision of The University of Connecticut. Repairs, alterations
165 or additions which are made pursuant to such approval of the
166 Commissioner of Construction Services shall conform to all guidelines
167 and procedures established by the Department of Construction
168 Services for agency-administered projects. (2) Notwithstanding the
169 provisions of subdivision (1) of this subsection, repairs, alterations or
170 additions involving expense to the state of five hundred thousand
171 dollars or less may be made to any state building or premises under
172 the supervision of the Office of the Chief Court Administrator or a
173 constituent unit of the state system of higher education, under the
174 terms of section 4b-11, and any contract for any such construction,
175 repairs or alteration may be entered into by the Office of the Chief
176 Court Administrator or a constituent unit of the state system of higher
177 education without the approval of the Commissioner of Construction
178 Services.

179 (b) Except as provided in this section, no repairs, alterations or
180 additions involving an expense to the state of more than [five hundred
181 thousand] one million dollars or, in the case of repairs, alterations or
182 additions to a building rented or occupied by the Judicial Branch, more

183 than one million two hundred fifty thousand dollars, or, in the case of
184 repairs, alterations or additions to a building rented or occupied by a
185 constituent unit of the state system of higher education, more than two
186 million dollars, shall be made to any state building or premises
187 occupied by any state officer, department, institution, board,
188 commission or council of the state government, nor shall any contract
189 for any construction, repairs, alteration or addition be entered into,
190 until the Commissioner of Construction Services or, in the case of the
191 construction or repairs, alterations or additions to a building under the
192 supervision and control of the Joint Committee on Legislative
193 Management of the General Assembly, said joint committee or, in the
194 case of construction, repairs, alterations or additions to a building
195 involving expenditures in excess of [five hundred thousand] one
196 million dollars but not more than one million two hundred fifty
197 thousand dollars under the supervision and control of the Judicial
198 Branch, said Judicial Branch or, in the case of the construction, repairs,
199 alterations or additions to a building involving expenditures in excess
200 of [five hundred thousand] one million dollars but not more than two
201 million dollars under the supervision and control of one of the
202 constituent units of higher education, the constituent unit, has invited
203 bids thereon and awarded a contract thereon, in accordance with the
204 provisions of sections 4b-91, as amended by this act, to 4b-96, inclusive.
205 The Commissioner of Construction Services, with the approval of the
206 authority having the supervision of state employees or the custody of
207 inmates of state institutions, without the necessity of bids, may employ
208 such employees or inmates and purchase or furnish the necessary
209 materials for the construction, erection, alteration, repair or
210 enlargement of any such state building or premises occupied by any
211 state officer, department, institution, board, commission or council of
212 the state government.

213 (c) Whenever the Commissioner of Construction Services declares
214 that an emergency condition exists at any state facility, other than a
215 building under the supervision and control of the Joint Committee on
216 Legislative Management, and that the condition would adversely
217 affect public safety or the proper conduct of essential state government

218 operations, or said joint committee declares that such an emergency
219 exists at a building under its supervision and control, the
220 commissioner or the joint committee may employ such assistance as
221 may be required to restore facilities under their control and
222 management, or the commissioner may so act upon the request of a
223 state agency, to restore facilities under the control and management of
224 such agency, without inviting bids as required in subsection (b) of this
225 section. The commissioner shall take no action requiring the
226 expenditure of more than [five hundred thousand] one million dollars
227 to restore any facility under this subsection (1) without the written
228 consent of the Governor, and (2) until the commissioner has certified to
229 the joint committee of the General Assembly having cognizance of
230 matters relating to legislative management that the project is of such
231 an emergency nature that an exception to subsection (b) of this section
232 is required. Such certification shall include input from all affected
233 agencies, detail the need for the exception and include any relevant
234 documentation. The provisions of this subsection shall not apply if any
235 person is obligated under the terms of an existing contract with the
236 state to render such assistance. The annual report of the commissioner
237 shall include a detailed statement of all expenditures made under this
238 subsection.

239 (d) The Commissioner of Administrative Services may, during the
240 term of a lease of a building or premises occupied by any state offices,
241 department, institution, board, commission or council of the state
242 government, (1) renegotiate the lease in order to enable the lessor to
243 make necessary alterations or additions up to a maximum amount of
244 five hundred thousand dollars, in consultation with the Commissioner
245 of Construction Services and subject to the approval of the State
246 Properties Review Board, or (2) require that a security audit be
247 conducted for such building or premises and, if necessary, renegotiate
248 the lease in order to enable the lessor to make necessary alterations or
249 additions to bring the building or premises into compliance with the
250 security standards for state agencies established under section 4b-132.
251 Alterations or additions under subdivision (2) of this subsection shall
252 not be subject to the spending limit in subdivision (1) of this

253 subsection, and a renegotiated lease under said subdivision (2) shall be
254 subject to the approval of the State Properties Review Board, provided
255 such approval requirement shall not compromise the security
256 requirements of chapter 60a and this section. The commissioner shall
257 determine the manner of submission, conditions and requirements of
258 bids and awards made for alterations or additions under this
259 subsection. No lease shall be renegotiated under this subsection for a
260 term less than five years. As used in this subsection, "security" and
261 "security audit" have the meanings assigned to such terms in section
262 4b-130.

263 Sec. 5. Section 4e-42 of the general statutes is repealed and the
264 following is substituted in lieu thereof (*Effective October 1, 2013*):

265 Not later than June 1, 2010, the State Contracting Standards Board
266 shall adopt regulations, in accordance with the provisions of chapter
267 54, that require bid security for all competitive sealed bidding for
268 construction contracts in a design-bid-build procurement when the
269 price is estimated by the state contracting agency to exceed [five
270 hundred thousand] one million dollars.

271 Sec. 6. Subsection (a) of section 4b-93 of the general statutes is
272 repealed and the following is substituted in lieu thereof (*Effective*
273 *October 1, 2013*):

274 (a) Every contract subject to this chapter shall include plans and
275 specifications detailing all labor and materials to be furnished
276 thereunder. Such specifications shall have a separate section for each of
277 the following classes of work if, in the estimate of the awarding
278 authority, the class of work will exceed [twenty-five] one hundred
279 thousand dollars: (1) Masonry work; (2) electrical work; (3) mechanical
280 work other than heating, ventilating and air conditioning work; and (4)
281 heating, ventilating and air conditioning work. Such specifications
282 shall also have a separate section for each other class of work for which
283 the awarding authority deems it necessary or convenient.

284 Sec. 7. (NEW) (*Effective October 1, 2013*) Every contract for the

285 construction, reconstruction, alteration, remodeling, repair or
 286 demolition of any public building or public work by the state which is
 287 estimated to cost less than one million dollars, except a construction
 288 project administered by the Department of Transportation, shall be
 289 awarded, whenever practicable, through a process of sealed bidding
 290 developed by the Commissioner of Construction Services. The process
 291 to be developed by the commissioner shall be different from the
 292 process required under part II of chapter 60 of the general statutes.
 293 Such process shall include the solicitation of bids from (1) at least three
 294 contractors from a list of preselected contractors, or (2) all available
 295 contractors from a list of preselected contractors if less than three are
 296 available, who are deemed qualified to perform the specific scope of
 297 work by the commissioner for the purpose of providing construction
 298 services to the state. If the estimate for the specific scope of work is
 299 estimated to exceed five hundred thousand dollars, the list of
 300 preselected contractors shall be prequalified pursuant to section 4a-100
 301 of the general statutes in addition to being deemed qualified by the
 302 commissioner to perform the specific scope of work.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2013</i>	4b-91(a) and (b)
Sec. 2	<i>July 1, 2013</i>	4b-91(j)
Sec. 3	<i>July 1, 2013</i>	4b-24b
Sec. 4	<i>July 1, 2013</i>	4b-52
Sec. 5	<i>October 1, 2013</i>	4e-42
Sec. 6	<i>October 1, 2013</i>	4b-93(a)
Sec. 7	<i>October 1, 2013</i>	New section

GAE *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 14 \$	FY 15 \$
Dept. of Administrative Services	GF - Potential Revenue Loss	Minimal	Minimal

Municipal Impact: None

Explanation

The bill could result in a minimal revenue loss (less than \$4,000) to the General Fund if fewer subcontractors apply for the Department of Administrative Services (DAS) prequalification and pay the fee. The estimate is based on the current \$600 initial registration fee and \$300 annual renewal fee for an aggregate work capacity of \$5 million or less. There are currently 253 subcontractors registered with DAS in the \$5 million or less category. If five percent of these subcontractors decided not to continue to be prequalified, the revenue loss would be \$3,600.

The other provisions are expected to streamline the administrative process for construction projects costing between \$500,000 and \$1 million. This is not projected to result in a fiscal impact because it is anticipated that any reduction in the amount of time needed to administer such projects will be used to administer and oversee other state construction projects.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: Department of Administrative Services

OLR Bill Analysis**sSB 978*****AN ACT CONCERNING SUBCONTRACTOR PREQUALIFICATION AND CLASSIFICATION THRESHOLDS AND INCREASING THE THRESHOLD FOR REQUIRING COMPETITIVE BIDDING OF PUBLIC WORKS PROJECTS.*****SUMMARY:**

This bill increases, from \$500,000 to \$1 million, the threshold triggering requirements for (1) a competitive bidding process for most state public works projects and (2) the selection of a Department of Administrative Services (DAS) prequalified contractor for certain state-funded public works projects by other public agencies. It establishes a separate awards process for state public works projects that cost less than \$1 million.

The bill also requires certain subcontractors to be prequalified by DAS at the time a bid is submitted. The law requires subcontractors with contracts worth more than \$500,000 for public works projects paid for in whole or in part by the state, except for those administered by the Department of Transportation (DOT), to be prequalified by DAS, but such subcontractors currently have until the project starts to become prequalified.

Additionally, the bill increases, from \$500,000 to \$1 million, the cost of emergency repairs that the Department of Construction Services (DCS) may contract for without certification to the Legislative Management Committee and the governor's prior approval. It also increases, from \$25,000 to \$100,000, the threshold triggering a requirement to separately list the cost of certain classes of work on a contract's plans and specifications. These classes are masonry; electrical; mechanical; and heating, ventilation, and air conditioning.

Lastly, the bill makes technical and conforming changes.

EFFECTIVE DATE: July 1, 2013, except the provisions concerning the separate process for projects costing less than \$1 million, the work class requirements, and certain technical changes, which are effective October 1, 2013.

COMPETITIVE BIDDING THRESHOLD

The bill increases the project cost threshold triggering competitive bidding. Under current law, with certain exceptions (e.g., DOT-administered projects), any contract for the construction, reconstruction, alteration, remodeling, repair, or demolition of any public building or any other public work by the state estimated to cost more than \$500,000 must be awarded, through competitive bidding, to the lowest responsible DAS-prequalified contractor. The law similarly requires that such projects by (1) DCS that use the design-build delivery method or (2) other public agencies (e.g., municipalities) financed in whole or in part by state funds be awarded to a DAS-prequalified bidder if the cost is more than \$500,000. The bill increases these thresholds to \$1 million.

SEALED BIDS FOR PROJECTS COSTING LESS THAN \$1 MILLION

The bill establishes a separate process of sealed bidding, developed by the DCS commissioner, for state public works projects estimated to cost less than \$1 million. (The bill is silent on projects that cost exactly \$1 million.) The process must be different from the competitive bidding process described above and include soliciting bids from (1) at least three contractors from a list of preselected contractors or (2) all available contractors on such a list if fewer than three are available. The contractors must be (1) deemed qualified by the DCS commissioner to perform the specific scope of work and (2) prequalified by DAS if the project is estimated to cost more than \$500,000.

This process must be followed whenever practicable and applies to all state public works projects that cost less than \$1 million except for

those administered by DOT. However, by law, higher education institutions and the legislative and judicial branches are responsible for certain public works projects involving assets under their supervision and control. It appears that these entities would continue to administer these projects, but would be required to select contractors deemed qualified by the DCS commissioner for the specific scope of work.

EMERGENCY REPAIRS

The law allows the DCS commissioner and the Legislative Management Committee to enter into contracts for emergency repairs to state facilities without competitive bidding. Under current law, the commissioner cannot act on a project costing more than \$500,000 without (1) the governor's written consent and (2) certifying to the Legislative Management Committee that a competitive bidding exception is warranted because of the project's emergency nature. The bill increases this threshold to \$1 million.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 14 Nay 0 (04/05/2013)